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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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ARIZONA CORPORATION COMMISSION

Complainant

v.

QWEST CORPORATION

Respondent

2003 JUL 15 P 12:12

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

Docket No. T-01051B-02-0871

Arizona Corporation Commission

DOCKETED

JUL 15 2003

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POST-HEARING BRIEF OF MOUNTAIN TELECOMMUNICATIONS, INC.

Mountain Telecommunications, Inc. ("MTI"), an intervenor in this proceeding, hereby submits this post-hearing brief and states as follows:

MTI is a telecommunications carrier certificated by the Commission to provide services, including competitive local exchange services, in the State of Arizona. MTI is incorporated under the laws of the State of Arizona, and its corporate headquarters are located at 1430 W. Broadway, Suite A-200, Tempe, Arizona 85282.

As a provider of telecommunications services, MTI utilizes network elements of Qwest Communications, the predominant incumbent local exchange carrier (ILEC) in Arizona, which it acquires on an unbundled basis pursuant to Section 251(c) of the Communications Act of 1934,

as amended (47 U.S.C. § 251(c)(3)) and subject to an interconnection agreement approved by the Commission.

Recently, the Commission conducted an expedited hearing in Docket No. T-00000A-00-0194 Phase II (In the Matter of Investigation Into Qwest Corporation's Compliance With Certain Wholesale Pricing Requirements For Unbundled Network Elements And Resale Discounts). Before the Commission in that expedited proceeding are several issues related to the rates charged by Qwest for transport service and for switching as part of its implementation of Decision No. 64922 issued in that docket.¹ Michael Lee Hazel, MTI's Vice President – Network, submitted direct testimony and rebuttal testimony in that proceeding. In addition to discussing the transport pricing issues, Mr. Hazel testified that Qwest had improperly raised the prices charged for multiplexing service in violation of the Phase II Order. Teresa K. Million submitted rebuttal testimony on behalf of Qwest in that proceeding in which she disputed Mr. Hazel's direct testimony on multiplexing pricing.

During the hearing in that proceeding, Assistant Chief Administrative Law Judge, Dwight D. Nodes, struck those portions of Mr. Hazel's and Ms. Million's testimony addressing multiplexing, but specifically held that the testimony involved Qwest's implementation of the Phase II Order and that the parties could resubmit that testimony in this proceeding.² Subsequently, Qwest and MTI entered into a joint stipulation for admission of testimony in which each party agreed not to object to the admission of the other party's testimony on the

¹ Decision No. 64922 - In the Matter of the Investigation Into Qwest Corporation's Compliance With Certain Wholesale Pricing Requirements For Unbundled Network Elements And Resale Discounts, issued June 12, 2002 ("Phase II Order").

² Docket No. T-00000A-00-0194, Reporter's Transcript of Proceedings, May 28, 2003, at 14.

multiplexing issue and each waived its right to cross-examine the other party's witness on that issue.³

As described by MTI witness Hazel, as part of Qwest's "implementation" of the Phase II Order, Qwest increased its monthly charges for multiplexing to MTI from \$196.85 to \$228.05 – an increase of fourteen percent!⁴ As noted by Mr. Hazel, that rate increase for multiplexing is in violation of the Commission's directive in the Phase II Order not to increase those rates pending Phase III. Ms. Million asserts in her testimony that Mr. Hazel's testimony regarding multiplexing rates was based on a Staff recommendation, not a Commission requirement.⁵

Contrary to Ms. Million's statement, the directive not to increase multiplexing rates pending Phase III was not merely a Staff recommendation, it was – and is – a Commission requirement. It is correct that Staff listed certain elements for which there had not been sufficient evidence to support new rates. In the Phase II Order, the Commission describes the Staff recommendation as follows:

Staff stated that there were a number of issues for which there was no evidence in the record to base a decision. Staff specifically named multiplexing, OC-3 and OC-12 UDIT, OC-12 and OC-48 (extended unbundled dedicated interoffice transport and side channelization), unbundled dark fiber, trunk ports, SS7, line information database, 8XX query service, miscellaneous elements, channel regeneration, and UNE-P new connections as examples of issues where sufficient evidence does not exist in the record for purposes of rendering a decision. (Staff Exceptions at 9). Staff suggests that if no existing rate for these elements exists, the Commission should set interim rates using a default calculation based on a ratio of the statewide average loop rate approved by the Commission compared to the statewide average loop rate proposed by Qwest in this proceeding.⁶

³ Joint Stipulation for Admission of Testimony, submitted June 5, 2003, as modified by Corrected Joint Stipulation for Admission of Testimony, submitted July 8, 2003.

⁴ MTI Exhibit 1 at 6.

⁵ Testimony of Teresa K. Million at 5.

⁶ Phase II Order at 80 (emphasis added).

While the above-quoted language does describe a Staff recommendation, the Phase II Order clearly and succinctly states what the Commission was requiring with respect to rates for those services, including multiplexing, for which there was not sufficient evidence upon which to base a decision. In the words of the Commission, “[w]e do not believe it is appropriate to adopt prices for services for which there is not an adequate record.”⁷ Issues concerning rates for those aforementioned services where there was not an adequate record were deferred by the Commission to Phase III of the docket.⁸ With respect to the rate treatment for those services, including multiplexing, which were deferred to Phase III, the Commission states as follows:

For issues that are deferred to Phase III, if the service is currently offered, and the rates have previously been reviewed and approved by the Commission, the current rates will continue in effect until different rates are established in Phase III.⁹

There can be no question that the rates for multiplexing are subject to this requirement set forth in the Phase II Order. Multiplexing is a service that had been offered by Qwest prior to the Phase II Order. Moreover, the rates for multiplexing that were in effect at the time of the Phase II Order had been reviewed and approved by the Commission. In short, nothing in the Phase II Order may reasonably be interpreted as requiring, permitting or condoning any increase in the rates for multiplexing pending the establishment of different rates in Phase III. Qwest’s unilateral attempt to increase the multiplexing rates by fourteen percent is a blatant and facial violation of an express requirement of the Phase II Order. The increase in multiplexing rates in contravention of a Commission directive to continue to charge the then-current rates until different rates are established in Phase III is one additional example of how Qwest has not implemented the Phase II Order in a manner consistent with the terms of that order.

⁷

Id.

⁸

Phase II Order at 81.

⁹

Id. (emphasis added).

In addition to imposing whatever sanctions against Qwest for its improper implementation of the Phase II Order which the Commission deems appropriate, MTI respectfully urges the Commission to order Qwest to comply with an express requirement of the Phase II Order by charging its multiplexing customers, including MTI, who purchase multiplexing as an unbundled network element, the multiplexing rates in effect at the time of the Phase II Order from the effective date of that order (June 12, 2002) until such time as the Commission establishes new rates for multiplexing based on an evidentiary record compiled in Phase III.

Respectfully submitted,

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July 15, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Post-Hearing Brief of Mountain Telecommunications, Inc. on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid on the following:

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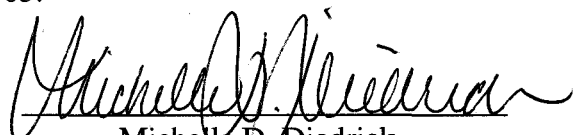
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